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November 21, 2019

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NO CMS

EPA Region 10

Office of the Regional Administrator

Via Certified Mail - Return Receipt Requested

Managing Agent
Kaiser Aluminum Washington, LLC
P.O. Box 15108
Spokane Valley, WA 99215

Via Certified Mail - Return Receipt Requested

Managing Agent
Kaiser Aluminum Corporation
27422 Portola Parkway, Suite 200
Foothill Ranch, CA 92610-2831

Re: **NOTICE OF INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT**

Dear Managing Agent:

We represent Waste Action Project, P.O. Box 9281, Covington, WA 98042, (206) 849-5927. Any response or correspondence related to this matter should be directed to us at the letterhead address. This letter is to provide you with sixty days' notice of Waste Action Project's intent to file a citizen suit against Kaiser Aluminum Washington, LLC and Kaiser Aluminum Corporation (collectively "Kaiser") under Section 505 of the Clean Water Act ("CWA"), 33 U.S.C. § 1365, for the violations of the CWA occurring at the Kaiser facility located at 15000 E Euclid Ave., Spokane Valley, WA, which are described below. Kaiser has violated and continues to violate "effluent standards or limitations" under 33 U.S.C. § 1365(f), including the conditions of its National Pollutant Discharge Elimination System ("NPDES") permit number WA0000892 (the "Permit") with respect to operations of and discharges of pollutants from the Kaiser facility to the Spokane River as described herein. The Permit was issued by the Washington Department of Ecology on June 23, 2011, with an effective date of July 1, 2011 and was amended twice, effective March 25, 2013 and November 18, 2014. The Permit has an expiration date of October 31, 2016, but Ecology has administratively extended it and the Permit remains in effect.

EFFLUENT AND WASTE LOAD LIMITATION VIOLATIONS

I. Condition S1.A of the Permit requires that all discharges and activities authorized by the Permit must be consistent with the terms and conditions of the Permit. Condition S1.A further establishes discharge limitations for certain pollutants. The discharge of any of the specified pollutants more frequently than, or at a level in excess of, that identified and authorized by the Permit constitute a violation of the terms and conditions of the Permit.

A. Condition S1.A.1 establishes the discharge limitations applicable to Kaiser's "Outfall 001" discharges to the Spokane River. Condition S1.A.1 establishes the maximum and minimum daily effluent limitation for pH levels as equal to or greater than 6.0 and less than or equal to 9.0. Kaiser has violated these limitations as follows, which are reasonably likely to recur:

Table 1 – Daily pH Limit Violations

	<u>Date</u>	<u>pH level (standard units)</u>
1.	6/13/18	5.5 s.u.
2.	6/25/18	5.9
3.	6/26/18	5.8
4.	6/27/18	5.9
5.	6/28/18	5.9
6.	6/29/18	5.9
7.	6/30/18	5.9
8.	6/3/17	10.4
9.	6/4/17	10.9
10.	8/15 ¹	5.8

B. Condition S1.A.2 establishes the discharge limitations applicable to Kaiser's Black Walnut Shell effluent discharges ("Outfall 006") into its final Outfall 001. Condition S1.A.2 establishes the maximum daily effluent limitation for Oil & Grease as 565.3 lbs/day. Kaiser has violated these limitations as follows, which are reasonably likely to recur:

Table 2 – Maximum Daily Oil & Grease Violations

	<u>Date</u>	<u>Oil & Grease</u>
1.	6/15 ²	1061 lbs/day

C. Condition S1.A.3 establishes the discharge limitations applicable to Kaiser's Sanitary Sewage Effluent discharges ("Outfall 003") into the wastewater lagoon. Condition S1.A.3 establishes the average monthly effluent limitation for fecal coliform as 200 colonies/100 ml and the average weekly effluent limitation for fecal coliform as 400 colonies/100 ml. Kaiser has violated these limitations as follows, which are reasonably likely to recur:

Table 3 – Average Monthly Fecal Coliform Violations

	<u>Month</u>	<u>Fecal Coliform</u>
1.	3/19	742 col/100 ml

Table 4 – Average Weekly Fecal Coliform Violations

	<u>Week</u>	<u>Fecal Coliform</u>
1.	3/25/19	742 col/100 ml

¹ Kaiser's August 2015 DMR does not provide the date in August 2015 when this discharge occurred.

² Kaiser's June 2015 DMR does not provide the date in June 2015 when this discharge occurred.

II. Condition S6.A establishes design criteria for the Black Walnut Shell Filtration System, including maximum daily and average monthly waste load limits for PCBs of 0.78 g/day. Kaiser has violated these limitations as follows, which are reasonably likely to recur:

Table 5 – PCB Waste Load Maximum Daily Limit Violations

	<u>Date</u>	<u>PCB Concentrations</u>
1.	7/17/19	1.41 g/day
2.	5/8/19	2.25
3.	7/5/17	1.40
4.	4/26/17	1.0
5.	4/12/17	1.18
5.	3/17 ³	1.93

Table 6 – PCB Waste Load Average Monthly Limit Violations

	<u>Month</u>	<u>PCB Concentrations</u>
1.	7/19	1.41 g/day
2.	5/19	1.54
3.	7/17	0.865
4.	4/17	1.09
5.	3/17	0.97

The above-described violations reflect only what information currently available to Waste Action Project indicates. These violations are ongoing and reasonably likely to recur, including whenever Kaiser discharges or loads the Black Walnut Shell Filtration System. Waste Action Project intends to sue for all violations, including those yet to be uncovered and those committed subsequent to the date of this notice of intent to sue.

Under Section 309(d) of the CWA, 33 USC § 1319(d), each of the above-described violations subjects the violator to a penalty of up to \$54,833 per day per violation. In addition to civil penalties, Waste Action Project will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs including attorney's fees.

Waste Action Project believes that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Kaiser Aluminum Washington, LLC and Kaiser Aluminum Corporation under Section 505(a) of the Clean Water Act for violations.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations in this letter and settlement terms. If you wish to pursue such discussions in the

³ The March 2017 DMR did not provide individual sample results or indicate the dates of sampling. The DMR indicated 1.93 g/day was the maximum PCB concentration result in March 2017.

absence of litigation, we suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Sincerely,

By:



Marc Zemel

SMITH & LOWNEY, P.L.L.C.

cc: Andrew Wheeler, Administrator, U.S. EPA
Chris Hladick, Administrator, Region 10 U.S. EPA
Maia Bellon, Director, Washington Department of Ecology
C T Corporation System, Registered Agent, 711 Capitol Way S, Ste. 204, Olympia,
WA 98501